

THE GULF INTRACOASTAL WATERWAY IN TEXAS

2002



Texas Department of Transportation

THE GULF INTRACOASTAL WATERWAY IN TEXAS

PRESENTED IN RESPONSE TO
THE TRANSPORTATION CODE, CHAPTER 51
AND
SUBMITTED TO THE SEVENTY-EIGHTH SESSION
OF THE TEXAS LEGISLATURE

PREPARED BY
TRANSPORTATION PLANNING AND PROGRAMMING DIVISION
TEXAS DEPARTMENT OF TRANSPORTATION
AUSTIN, TEXAS
2002

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May 12, 2003

Governor Rick Perry

Lieutenant Governor David Dewhurst

Speaker of the House of Representatives Tom Craddick

Members of the 78th Legislature

Prior to 1975, the need existed for a single, nonfederal sponsor of the Gulf Intracoastal Waterway in Texas. To fulfill that need, the 64th Texas Legislature passed the 1975 Texas Coastal Waterway Act, now codified as Transportation Code, Chapter 51. In this Act, the legislature appointed the State Highway and Public Transportation Commission, now the Texas Transportation Commission, to act as the state's agent in fulfilling the nonfederal sponsorship of the Gulf Intracoastal Waterway in Texas.

Through this Act, the legislature also required the commission to continually evaluate the Gulf Intracoastal Waterway as it relates to Texas, including an assessment of the importance of the waterway, an identification of principal problems and significant modifications to the waterway, and specific recommendations for legislative action, if any.

The mandated evaluation has been conducted and a report prepared. The report reflects the Texas Transportation Commission's focus on using and maintaining existing transportation corridors of the state. It is essential that state leaders understand the importance of transportation corridors such as the waterway when addressing congestion, air pollution, safety, and economic development opportunities associated with an efficient and effective multimodal transportation network.

The report is hereby submitted to the 78th Legislature in accordance with V.T.C.A., Transportation Code, Section 51.007.

Sincerely,

Michael W. Behrens, P. E.
Executive Director

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	2
Chapter 1	
PLAN IT.....	5
Chapter 2	
USE AND MAINTAIN IT.....	8
Chapter 3	
LEGISLATIVE RECOMMENDATIONS.....	15
WORKS CITED.....	17
APPENDIX - LEGISLATIVE REFERENCES	

TEXAS GULF INTRACOASTAL WATERWAY



Figure 1 – Texas GIWW.

EXECUTIVE SUMMARY

The Texas Department of Transportation (TxDOT) is the state agency charged with providing the safe, effective and efficient movement of people and goods. TxDOT fulfills its mission by focusing on five objectives: ¹

- Reliable Mobility
- Improved Safety
- System Preservation
- Accelerated project Delivery
- Economic Vitality

To see that these objectives are met, TxDOT has recently created a simplified operating plan involving five steps, or strategies, for ensuring transportation facilities are the best they can be. They are:

- Plan It
- Build It
- Use It
- Maintain It
- Manage It

This report, the fourteenth in the series as required by the Transportation Code, is submitted on behalf of the Texas Transportation Commission (Commission) to the Seventy-eighth Texas Legislature, summarizing the state's sponsorship efforts to maintain the Gulf Intracoastal Waterway (GIWW) in Texas. The activities of the GIWW fall under the strategy of, "Maintain It."

The Texas portion of the GIWW is over 50 years old and presents a significant challenge to the state to maintain and optimize the benefits of this transportation system. The GIWW has some unique transportation advantages and it is essential that it be recognized as an important feature during the development of an effective and safe transportation system.

The entire GIWW is a 1,300-mile-long, man-made canal that runs along the Gulf of Mexico coastline from Texas' southernmost tip at Brownsville to St. Marks, Florida (Figure 2). The canal links all of the Gulf Coast ports and enables these ports to access the inland waterway system of the United States.

The GIWW is the nation's third busiest waterway with the Texas portion handling over 58 percent of its traffic. In Texas, the GIWW is 423 miles long and is an important component of the state's diversified multimodal transportation system. In 2000, over 66 million short tons of cargo were moved on the Texas portion of the waterway with a

commercial value of over 25 billion dollars. In combination with ports, Texas ranked second in the nation in total waterborne tonnage moved in the United States.²

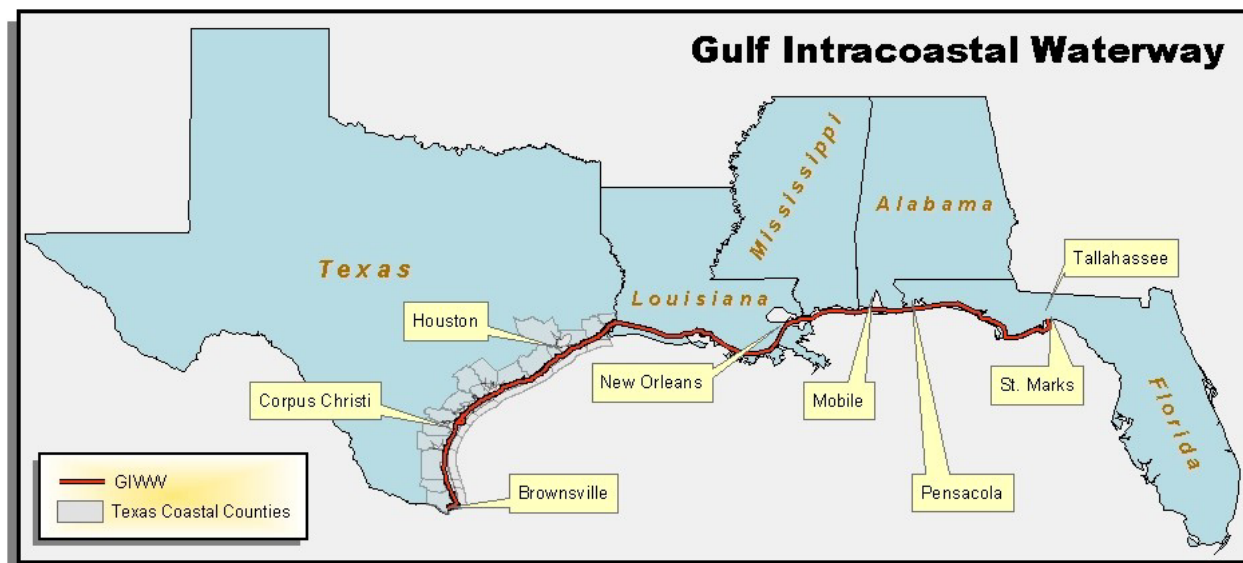


Figure 2 – 1300-mile GIWW

Balancing the environmental issues inherent to the unique Texas coast and the economic and developmental possibilities of the GIWW has been a difficult challenge. One location in particular, where objections have led to legal recourse, is the southernmost reach of the Texas GIWW which flows through the Laguna Madre. Landowners and environmental interests have raised objections to the placement of dredged material. To respond to these objections, the U.S Army Corps of Engineers (Corps) along with TxDOT and numerous federal and state agencies have worked for 7 years to develop a new dredged material management plan and an update to the 1975 Environmental Impact Statement for this portion of the waterway. The draft dredged material management plan was released for public comment in December 2002.

TxDOT and the Corps also initiated Section 216 studies for the Texas portion of the GIWW. These studies address problem areas, both functional and environmental. Funding for these studies is through congressional actions and appropriation. Many of these studies are awaiting funding or have received limited funding from Congress. TxDOT considers these Section 216 studies to be important and necessary for the current and future operation of the GIWW.

The GIWW was conceived, planned, and built many years ago. To build, maintain, and manage it in the future will require the continued support of the Texas Legislature. The GIWW is an essential component of the state's and nation's transportation network and is an integral part of the Governor's priority goal, "provide for all of Texas transportation needs for the new century." To facilitate future efforts towards this goal, the following items are recommended for consideration:

- ✓ The state advocates the continuance of shallow draft navigation along with maintenance of the GIWW by the Corps.
- ✓ The state advocates the continuation of the Corps Section 216 Studies, which will address current and long-term needs of the GIWW in Texas.
- ✓ The state advocates that dredged material is to be used beneficially when possible and that the Texas Coastal Management Program develop rules that a) reward sponsors of environmental beneficial usage of dredged material projects with mitigation credits and b) eliminate long-term maintenance requirements for sponsors of beneficial usage of dredged material projects.

CHAPTER 1

PLAN IT

The development of the Gulf Intracoastal Waterway (GIWW) required the concerted efforts of federal, state, and local interests. Nearly 150 years ago, planning associated with this project began and continues today.

DEVELOPMENT HISTORY

In 1850, five years after Texas was admitted to the Union, coastal business interests began to connect portions of the state's coastline by dredging links between the natural bays, lakes, rivers, and bayous. In 1854, the Galveston and Brazos Canal connected West Galveston Bay to the Brazos River. This canal ranged in depth from 3 to 6 feet and was the first navigable link to be constructed on the Texas coast.

In 1873, the federal government passed the Rivers and Harbors Act of 1873. This act appropriated funds for a survey to "connect the inland waters along the margin of the Gulf of Mexico from Donaldson, Louisiana to the Rio Grande River in Texas by cuts and canals." This Act was the start of the development of the Intracoastal Waterway. A series of congressional acts passed between 1925 and 1942 allowed for continued expansion of the waterway. By 1941, the GIWW in Texas extended from the Sabine River to Corpus Christi with a bottom width of 100 feet and depth of 9 feet. Legislation passed in 1942 extended the canal to Brownsville and changed its dimensions to 125 feet by 12 feet deep. Construction was completed in 1949. Figure 3 depicts a timeline of the Texas GIWW history.

TEXAS GIWW HISTORY

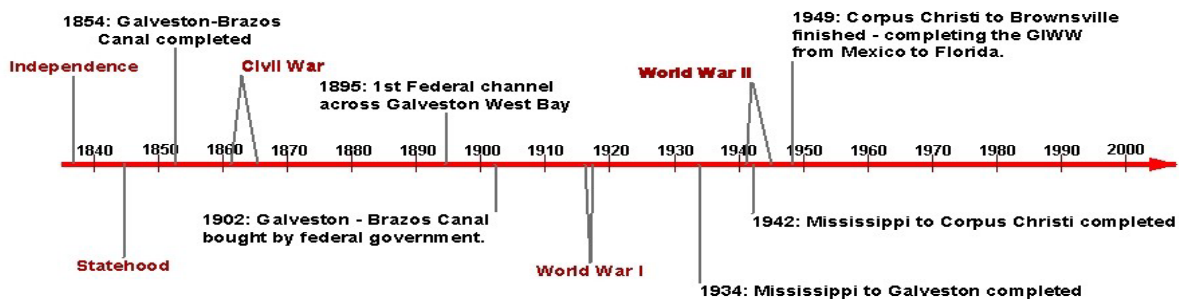


Figure 3 - Timeline.

STUDIES AND RESEARCH

The Corps, under the authority of the Flood Control Act of 1970, has initiated various Section 216 Studies. These studies look at specific water resources projects

that may have changed because of physical or economic reasons. TxDOT acts as the nonfederal sponsor for the studies involving the GIWW in Texas.

For the Texas portion of the GIWW, the waterway was divided into five separate Section 216 study areas. These areas have been further divided into 5 studies to focus on complex or unique problems. Figure 4 illustrates the five main Section 216 Studies in Texas and the estimated completion dates.

Limited federal appropriations have caused significant delays to many of the Section 216 Studies. Since the GIWW in Texas is over 50 years old, these studies are a necessary and important review of the waterway. Antiquated facilities, erosion problems, and navigational hazards are among the current problems of the GIWW. The lacks of improvements combined with increased traffic are causing significant delays to commercial users.

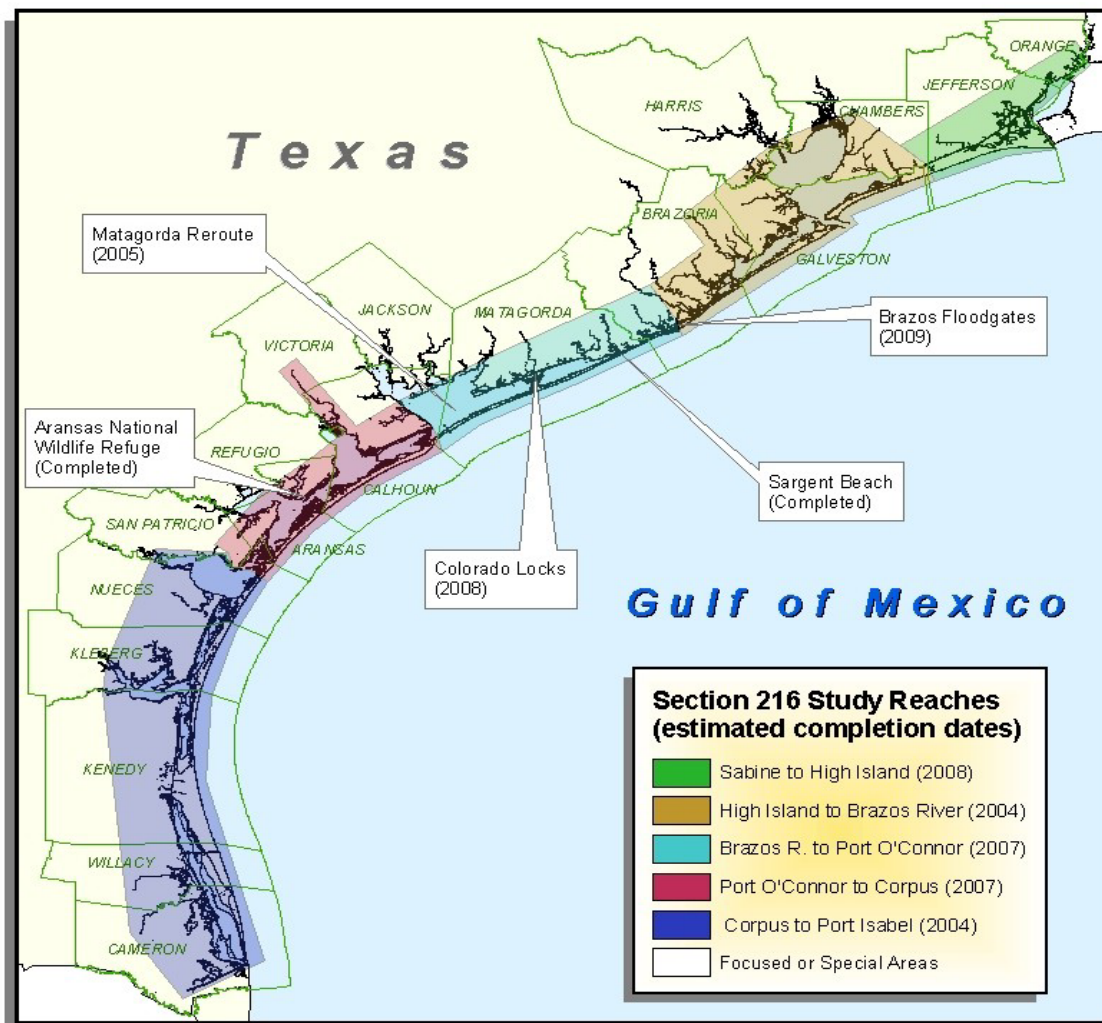


Figure 4 – Section 216 Study Areas

In addition to the Section 216 Studies, TxDOT initiated several transportation and waterway related studies. Several of these water-related studies were developed through either TxDOT's cooperative research program which is co-funded by the state and Federal Highway Administration or the 100% state funded research program. These programs, plus interagency agreements, have allowed TxDOT to participate in several studies that address various needs of the GIWW. Research studies funded by the TxDOT are shown in Table 1-1.

TxDOT SPONSORED RESEARCH

TABLE 1-1

PROGRAM	STUDY	RESEARCHER(S)
State Planning Research	Infrastructure Impacts and Operational Requirements Associated with the Container Ships and Megaships on the Texas Transportation System	University of Texas, Center for Transportation Research
State Planning Research	The Value of Pipelines to the Transportation System of Texas	Texas A&M University, Texas Transportation Institute
Interagency Agreement	2022 Gulf Intracoastal Waterway Master Plan	Texas A&M University, Texas Transportation Institute
State Planning Research	Alternative Dredging and Disposal Methods for the Texas GIWW	Texas A&M University, Texas Transportation Institute and Center for Dredging Studies

CHAPTER 2

USE AND MAINTAIN IT

One of the initial functions of the GIWW was to provide protected inland transportation of goods and troops during World War II. It has since evolved into a multipurpose waterway used by recreational and commercial interests. Recreation use includes fishing, skiing, sightseeing, and as a protected water transportation route for travelers along the coast. Commercial uses include the movement of domestic and international cargo, harvesting of fish and shellfish, and servicing of the gulf and coastal oil and gas industry.

DIRECT AND INDIRECT BENEFITS

The GIWW provides some important direct and indirect benefits to the state, such as:

- In 1999, the GIWW facilitated commercial and sport fishing entities to catch an estimated 25.7 million pounds of shrimp, oysters, crabs and finfish within Texas bay systems amounting to a wholesaler's value of \$32.6 million.³
- In 2001, 65.1 million short tons (one short ton equals 2,000 pounds) of goods were moved on the Texas GIWW. The estimated value of these goods was over \$25 billion. This was accomplished by approximately 101,818 barge one-way trips.⁴
- The movement of goods by barges on the intracoastal is an efficient, economical, and environmentally friendly mode of transportation (Figure 5).⁵
- The movement of goods by barge is a safe mode of transportation. In 2002, according to Office of Hazardous Materials Safety, the total number of documented hazardous spills in Texas was 37 by air, 1027 by highway, 124 by railway, and 2 by water transportation.⁶

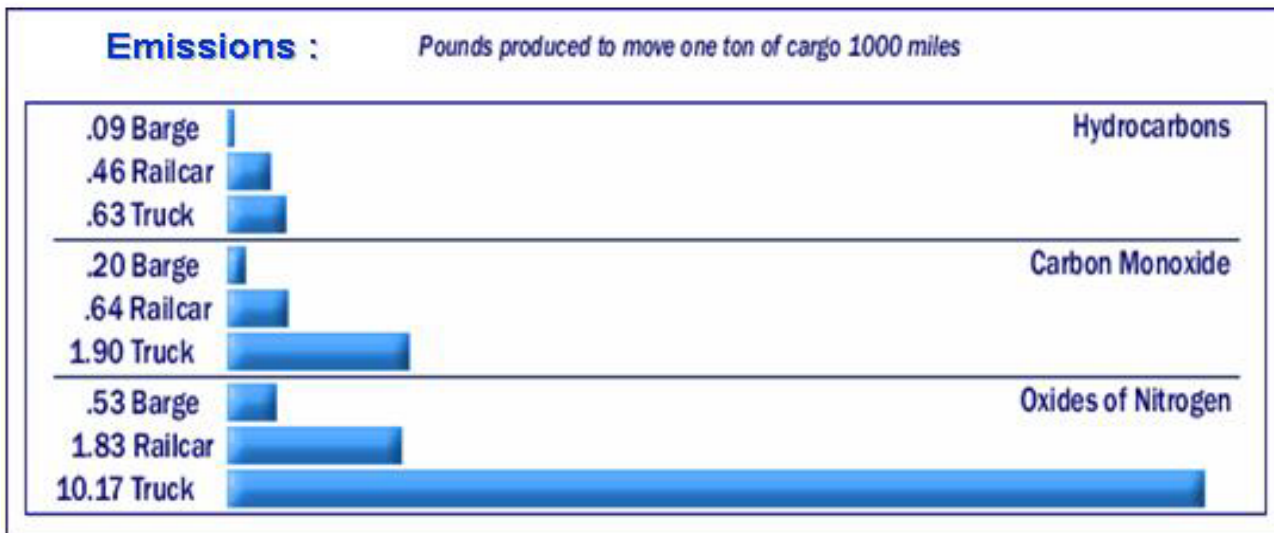
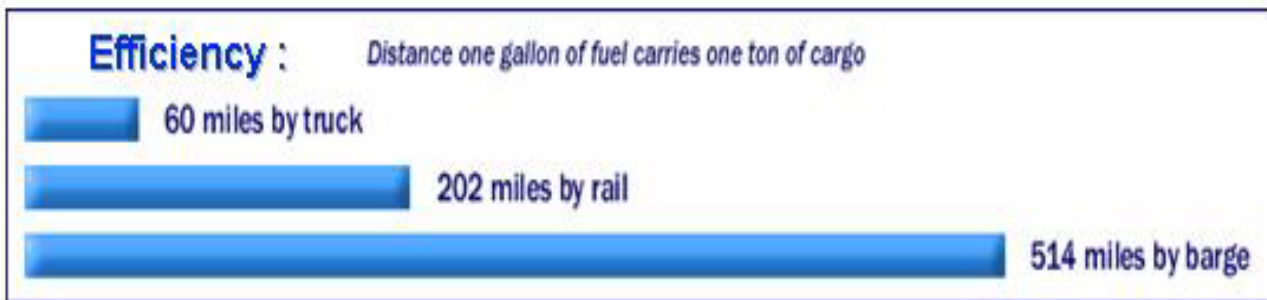
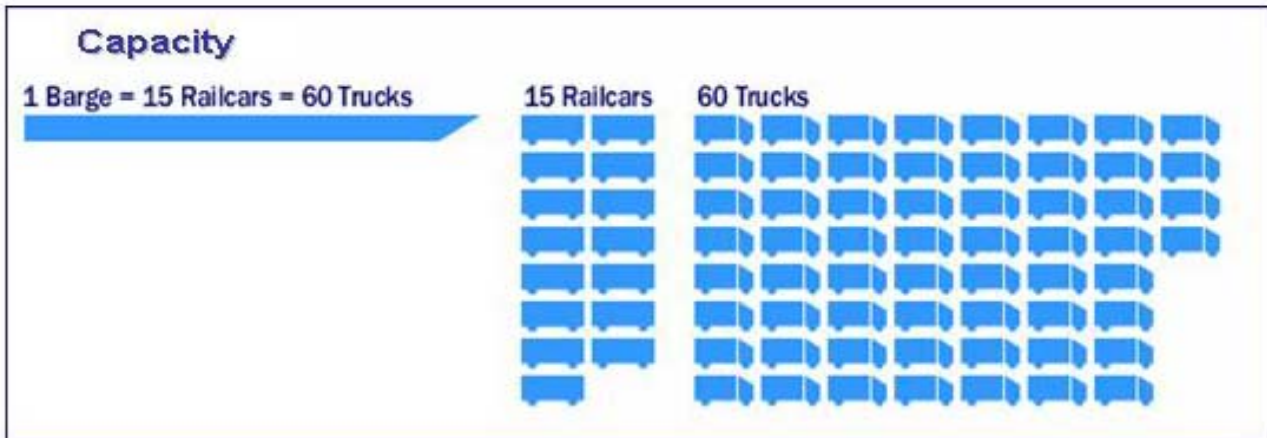


Figure 5 – Mode Comparison

OPERATIONAL CONCERNS

The waterway, in its current form, is now over 50 years old. During the past 50 years, the size of individual barges and towboats, the width and length of barges lashed together and pushed as a unit, and the volume of traffic have steadily increased. These factors have led many to believe that the 1949 dimensions of the GIWW and its associated structures do not adequately support the state of barge transportation today. The Brazos River Floodgates and the Colorado River Locks are, for example, two lock type structures on the waterway that may need to be removed or modified. The structures are only 75-feet wide. To move through the structures, vessel operators must park their tows, break the barges apart, move them through the locks in smaller sets or individually, and then put them back together on the other side. This process, known as tripping, is difficult and causes delays estimated to cost over \$2 million dollars a year to the towing industry at each location.⁷

The area in West Galveston Bay where the GIWW passes beneath the dual Interstate Highway 45 bridges and the Galveston Island Railroad Bridge is also a major problem. The opening for barge traffic through these structures is only 105 feet wide for a distance of about 800 feet. Repairs to damages to the fender systems of these structures costs TxDOT an estimated half million dollars each year, and the towing industry has identified this spot as the greatest hazard to navigation on the entire 1300 miles of the GIWW. TxDOT has plans to replace the Interstate bridges in 2005, and the Coast Guard is working on replacing the railroad bridge under the authority of the Truman-Hobbs Act with an estimated construction date of 2007. Both of these structures will likely have 300-foot openings for barge traffic when completed.

TXDOT AREAS OF FOCUS

For fiscal years 2001 and 2002, TxDOT was appropriated 1.35 million dollars for acquiring dredged material disposal sites. The Corps requested that TxDOT acquire 220 acres of land during this period on the Bolivar Peninsula in Galveston County. The acquisition process to acquire this acreage is still ongoing at this time. A survey and appraisal were ordered and received in 2002. The negotiation phase of the acquisition process with the landowner was still on-going as the fiscal year ended.

The proposed acquisition of 750 acres of land in Kenedy and Kleberg counties was suspended by the Commission until the Laguna Madre Dredged Material Management Plan is completed. The draft Dredged Material Management Plan and Supplemental Environmental Impact Statement being developed by the Interagency Coordination Team are scheduled to be released for public comment in late 2002 and early 2003 respectively. Information contained within these reports will provide guidance to TxDOT on how to proceed on this issue.

The GIWW also requires periodic maintenance dredging to remove sediments that accumulate in the waterway and to maintain a minimum depth to facilitate safe

navigation. Due to the shallow bays and submerged river mouths, maintaining the depth and width of the Texas GIWW is a constant operation (more than any other gulf state).

During 2001, approximately \$21,877,264 in federal funds was expended by the Corps to maintain the structures and navigability of the Texas GIWW. Approximately 7,140,500 cubic yards of sediment were dredged in 4 separate projects. Of this material, approximately 2,059,000 cubic yards were disposed in confined placement sites, 3,731,000 cubic yards were disposed of open-bay, and 1,350,500 cubic yards were used beneficially.

During 2002, approximately \$10,668,924 in federal funds was expended to maintain the structures and navigability of the Texas GIWW. Approximately 5,772,700 cubic yards of sediment were dredged in 4 separate projects. Of this material, approximately 2,711,200 cubic yards were disposed in confined placement sites, 1,673,500 cubic yards were disposed of open-bay, and 1,388,000 cubic yards were used beneficially.⁸ Figure 6 depicts the relative volumes that were removed and the location along the waterway.

Texas GIWW Dredging Activity FY 2001 & FY 2002

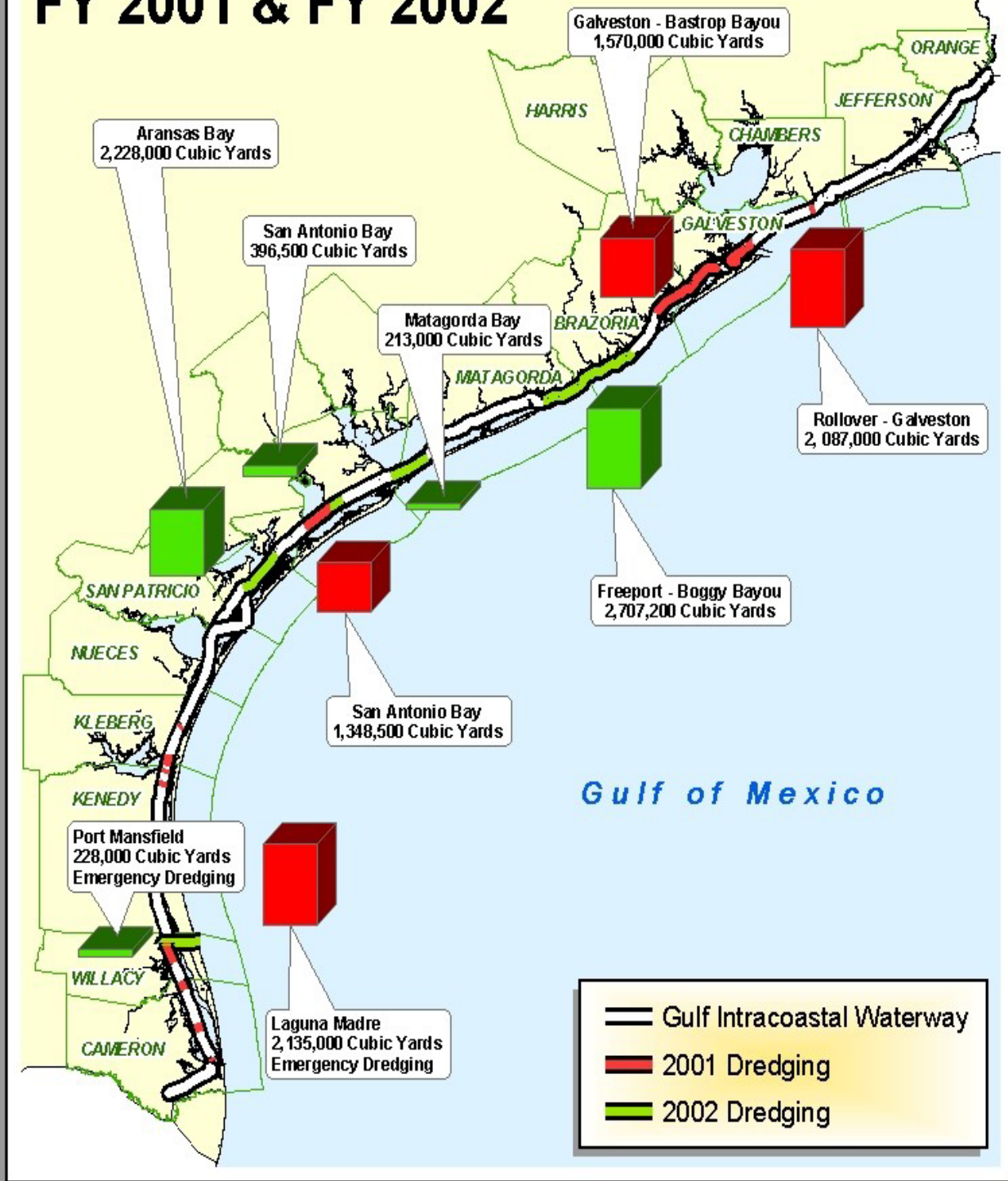


Figure 6 – FY 2001 & 2002 Dredging

During fiscal years 2001–2002, TxDOT participated in one GIWW beneficial use project with the Corps. TxDOT combined \$174,900 in state funds with \$325,000 from the Corps to create 43 acres of emergent and marshland habitat from 250,000 cubic yards of dredged material in West Galveston Bay. This project is just past the planting stage, but Figure 7 illustrates how a typical habitat-creation beneficial use project works.

A Beneficial Use Process

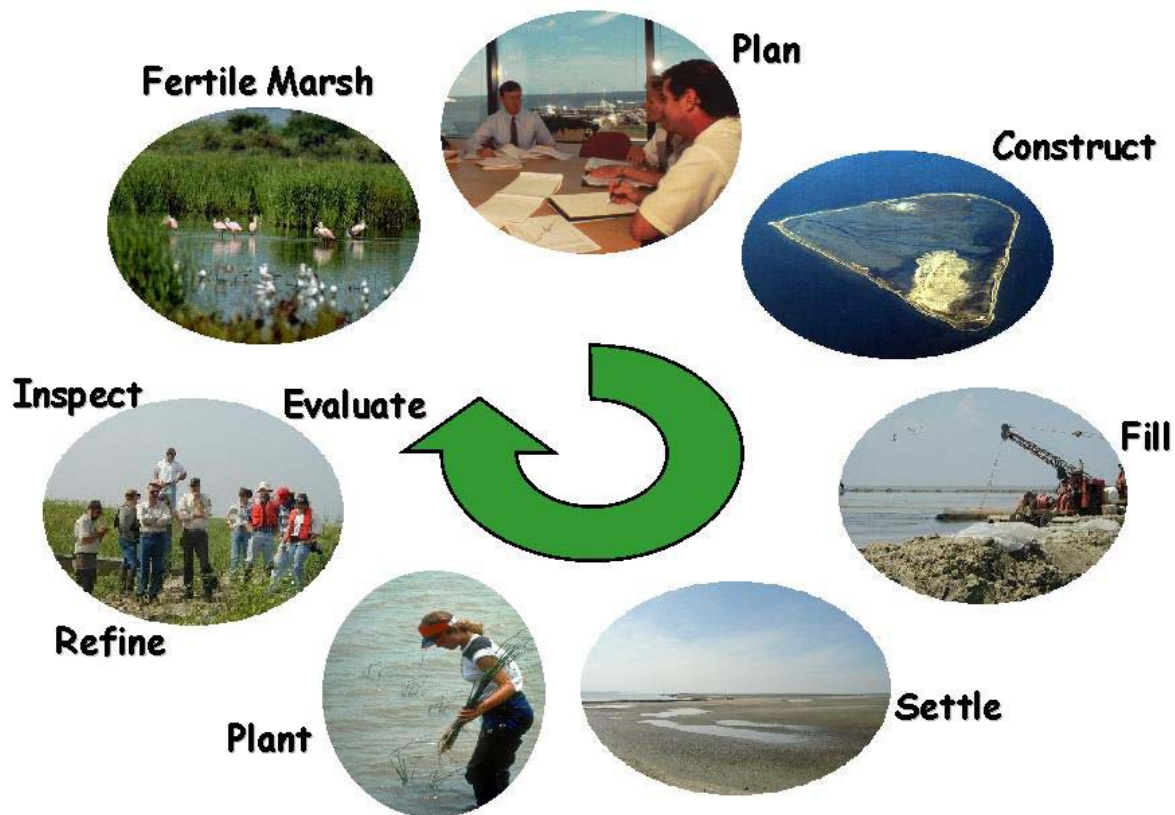


Figure 7 – Habitat Creation

To facilitate actions within state government, TxDOT formed the Gulf Intracoastal Waterway Advisory Committee (GIWAC). This committee advises and assists TxDOT in determining environmentally suitable dredged material placement locations; in developing modifications to the GIWW; and in developing alternative dredged material disposal plans. The committee met twice during the 2001-2002 biennium. Recommendations were made on future beneficial use projects, and a workshop was held to discuss various issues associated with maintaining the waterway in the future.

TxDOT was also a member of various Interagency Coordination Teams (ICT) set up by the Corps. These teams were composed of federal and state agencies with inter-

linked responsibilities for or affected by the GIWW. For the 2001-2002 biennium, TxDOT was a member of three ICTs addressing concerns within the Laguna Madre, Aransas National Wildlife Refuge, and items associated with the Corpus Christi Ship Channel Improvement Plan.

The Laguna Madre ICT completed their draft Dredged Material Management Plan (DMMP) in September 2002 and released the document for public comment in December 2002. The draft Supplemental Environmental Impact Statement (SEIS) is scheduled to be released around April 2003 for public comment.

The Corpus Christi Ship Channel Improvement Plan Regulatory Agency Coordination Team released their EIS and DMMP for public comment in June 2002.

The Aransas Wildlife Refuge team already completed their EIS and DMMP and is now designing various beneficial use of dredged material projects to be built over the next several dredging cycles.

CHAPTER 3

LEGISLATIVE RECOMMENDATIONS

There are various items of possible legislative concern related to future operations of the GIWW. A recent issue being investigated involves future federal funding levels for coastal and wetland related projects. Congress has provided Louisiana with approximately \$40,000,000 a year through the 1990 Coastal Wetlands Planning, Protection, and Restoration Act. This Act designates that 70 percent of the funds generate annually by a tax on small engines and equipment go to Louisiana restoration projects while 15 percent goes to the Coastal Wetlands Conservation Grant Program and the remaining 15 percent to North American Wetlands Conservation Act projects.⁹ The Texas House Committee on Land and Resource Management, Interim Report 2002, notes this difference in federal funding and strongly urges Congress to consider proportional funding for dredging by the Galveston District.¹⁰

In addition, there is a growing issue of concern regarding beneficial use projects and future obligations of the builders of those projects. Currently, entities expending additional funds to use dredged material in a beneficial manner are also required to agree to manage and pay for future modifications to these projects. This policy creates an open-ended funding obligation for the entities choosing to build beneficial projects from dredged material. Such a policy is actually a disincentive towards building any projects with dredged material.

An offshoot of this issue is the debate over whether or not a beneficial use project qualifies as a credit in terms of mitigating impacts of developmental projects. Costs for beneficial use projects are averaging around 3 times higher than traditional dredged material placement activities. Counting beneficial use projects as mitigation credits will create an incentive for entities to try and beneficially use dredged material. If the state desires to promote beneficial use of dredged material projects, then there must be an incentive for expending the additional funds necessary to create these projects.

Finally, the Corps has been studying the GIWW and improvements needed under the authority of Section 216 Studies. This process has been ongoing since 1990 and is anticipated to continue through 2013. The timely completion of these studies and the correction of the items identified in the studies are very important to continuing and enhancing the viability of the GIWW.

The GIWW in Texas is an important component of the state's multimodal transportation system. Maintaining and optimizing the benefits of the GIWW is a big challenge. The state must balance the benefits of maintaining a modern and diverse transportation infrastructure, while fostering the protection and enhancement of the coastal environment. As Texas enters the next millennium, both state and national

economic activities are expected to grow, providing additional transportation opportunities and challenges.

To support the state's nonfederal sponsorship of the GIWW and facilitate planning, maintenance, preservation, research, and improvement of the waterway, the following items are recommended for consideration by the Texas Legislature:

- ✓ The state advocates the continuance of shallow draft navigation along with the continuation of maintenance of the GIWW by the U.S Army Corps of Engineers.
- ✓ The state advocates the continuation of the U.S Army Corps of Engineers Section 216 Studies, which will address current and long-term needs of the GIWW in Texas.
- ✓ The state advocates that dredged material be used beneficially and that the Texas Coastal Management Program develops rules that a) reward sponsors of environmental beneficial usage of dredged material projects with mitigation credits and b) eliminate long-term maintenance requirements for sponsors of beneficial usage of dredged material projects.

WORKS CITED

- ¹ Texas Department of Transportation, Creating Tomorrow's Transportation System, Strategic Plan 2003 - 2007
- ² U.S Army Corps of Engineers, Waterborne Commerce Statistics Center, Waterborne Commerce of the United States, 2000.
- ³ Texas Parks and Wildlife, Coastal Fisheries Division, Trends in Texas Commercial Fishery Landings, 1972-1999.
- ⁴ U.S Army Corps of Engineers, Waterborne Commerce Statistics Center, Waterborne Commerce of the United States, 2000.
- ⁵ U.S Army Corps of Engineers, Navigation Information Connection, Transportation Mode Comparison – Energy-Environment-Efficiency
- ⁶ Office of Hazardous Materials Safety, Hazardous Material Incident Data, 2000
- ⁷ U.S Army Corps of Engineers, Galveston District, GIWW Modifications, Texas, Section 905 (b) (WRDA 86) Analysis
- ⁸ U.S Army Corps of Engineers, Galveston District, Various Project Specifications for Dredging, 2000 – 2001
- ⁹ Senator John Breaux: Press Releases, <http://breaux.senate.gov/pressarchive/991119.html>
- ¹⁰ House Committee on Land and Resource Management, Texas House of Representatives, Interim Report 2002

APPENDIX LEGISLATIVE REFERENCES

TEXAS TRANSPORTATION CODE

TITLE 4. NAVIGATION

SUBTITLE A. WATERWAYS AND PORTS

CHAPTER 51. TEXAS COASTAL WATERWAY ACT

§ 51.001. Short Title

This chapter may be cited as the Texas Coastal Waterway Act.
Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.002. Definitions

In this chapter:

(1) "Coastal marshes" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state that are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

(2) "Coastal public land" means:

(A) the state-owned submerged land and the water overlying that land; and

(B) state-owned islands or portions of islands that may be affected by the ebb and flow of the tide.

(3) "Commission" means the Texas Transportation Commission.

(4) "Gulf Intracoastal Waterway" means the main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward to the Brownsville Ship Channel near Port Isabel that is known as the Gulf Intracoastal Canal.

(5) "Department" means the Texas Department of Transportation.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.06(a), eff. Sept. 1, 1997.

§ 51.003. Purpose

This state shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel in order to:

(1) support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound manner;

(2) prevent waste of publicly and privately owned natural resources;

(3) prevent or minimize adverse impacts on the environment; and

(4) maintain, preserve, and enhance wildlife and fisheries.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.004. Cooperation With Other Entities

(a) The commission shall cooperate with the Department of the Army, other federal and state agencies, navigation districts, port authorities, counties, and other appropriate persons to determine the state's federal local sponsorship requirements relating to the Gulf Intracoastal Waterway, shall fulfill those requirements, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law.

(b) The commission shall coordinate actions taken under this chapter that may have a significant environmental impact or effect on coastal public land, coastal marshes, wildlife, and fisheries with appropriate federal and state agencies that have environmental, wildlife, and fisheries responsibilities.

(c) Within its authority and available resources, an agency or political subdivision of the state shall assist the commission in performing its duties under this chapter.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.005. Land Acquisition

(a) The commission may acquire by gift, purchase, or condemnation property or an interest in property that the commission considers necessary to enable it to meet its responsibilities under this chapter, including easements and rights-of-way for dredge material disposal sites or channel alteration.

(b) The commission may not:

(1) acquire oil, gas, sulphur, or other minerals that may be recovered without using the surface of land acquired by the commission for exploration, drilling, or mining purposes; or

(2) condemn any submerged public land under the jurisdiction of the School Land Board.

(c) An agency or political subdivision of the state may convey, without advertisement, title or rights and easements owned by the agency or political subdivision to any property the commission needs to meet its responsibilities under this chapter.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.006. Hearing Required Before Acquisition of Property

(a) Before the commission approves or implements a plan or project to acquire property or an interest in property under Section 51.005 for a dredge material disposal site or for an alteration of the Gulf Intracoastal Waterway that requires the acquisition of additional property or an interest in property to meet its responsibilities under this chapter, the commission shall hold a public hearing to receive evidence and testimony concerning the desirability of the proposed dredge material disposal site or channel alteration.

(b) The commission shall publish notice of a plan or project and the date, time, and place of a hearing at least once a week for three successive weeks before the hearing in a newspaper of general circulation that is published in the county seat of each county in which any part of a proposed dredge material disposal site or channel alteration is located.

(c) The commission may approve the plan or project and implement it and acquire additional property if the commission determines, after the public hearing, that the proposed plan or project can be accomplished without an unjustifiable waste of publicly or privately owned natural resources or a permanent and substantial adverse impact on the environment, wildlife, or fisheries.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.007. Evaluation and Report

(a) In cooperation with appropriate persons, the commission shall continually evaluate the impact of the Gulf Intracoastal Waterway on the state. The evaluation shall include:

(1) an assessment of the importance of the Gulf Intracoastal Waterway that includes identification of its direct and indirect beneficiaries;

(2) identification of principal problems and possible solutions to those problems that includes estimated costs, economic benefits, and environmental effects;

(3) an evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and

(4) specific recommendations for legislative action that the commission believes are in the best interest of the state in carrying out the state's duties under this chapter.

(b) The commission shall publish a report of its evaluation and present the report to each regular session of the legislature.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.008. School Land Board Power

This chapter does not diminish the duty or power of the School Land Board to manage the coastal public land of the state.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 51.009. Beneficial Use of Dredge Material

(a) The commission, through the department, may enter into an agreement with the Department of the Army to participate in the cost of a project to beneficially use material dredged from the Gulf Intracoastal Waterway.

(b) The commission by rule shall establish eligibility criteria for a project to beneficially use the dredge material.

(c) In this section and Sections 51.010 and 51.011, beneficial use of dredge material means any productive and positive use of dredge material and includes broad use categories such as fish and wildlife habitat development, human recreation, and industrial and commercial uses.

Added by Acts 1997, 75th Leg., ch. 165, § 30.06(b), eff. Sept. 1, 1997.

§ 51.010. Property Acquisition

The commission, through the department, may acquire an interest in property required for a project to beneficially use dredge material in the manner provided by Section 51.005.

Added by Acts 1997, 75th Leg., ch. 165, § 30.06(b), eff. Sept. 1, 1997.

§ 51.011. Hearing Required Before Participation in Project

(c) Before the department agrees to participate in the cost of a project to beneficially use dredge material that requires the acquisition of an interest in property, the commission shall hold a public hearing on the desirability of the project.

(b) The commission shall publish notice of the date, time, and place of the hearing at least once a week for three successive weeks before the hearing in a newspaper of general circulation published in the county seat of each county in which the project is located.

(c) The department may agree to participate in the cost of the project if the commission determines, after the public hearing, that the project can be accomplished without unjustifiable waste of publicly or privately owned natural resources or a permanent and substantial adverse effect on the environment, wildlife, or fisheries.

Added by Acts 1997, 75th Leg., ch. 165, § 30.06(b), eff. Sept. 1, 1997.

SPONSORSHIP RESOLUTION OF 1983

GULF INTRACOASTAL WATERWAY (MAIN CHANNEL – TEXAS SECTION)

RESOLUTION

WITNESSETH:

THAT WHEREAS, the main channel of the Gulf Intracoastal Waterway running from the Sabine River southward to the Brownsville Ship Channel near Port Isabel, hereinafter referred to as the Main Channel Project, has been authorized in accordance with the following Federal legislation:

YEAR	PUBLIC LAW NUMBER	HOUSE DOCUMENT	DESCRIPTION
1927	560	No. 238, 68 th Congress, 1 st session	9 – foot channel from the Sabine River to Corpus Christi
1942	675	-----	12 – foot enlargement of existing channel and its extension to the vicinity of the Mexican border
1946	525	No. 700, 79 th Congress, 2 nd Session	Redfish Bay Relocation
1950	516	No. 196, 81 st Congress, 1 st Session	Galveston Bay Alternate Channel
1962	87-874	No. 556, 87 th Congress, 2 nd Session	16 – foot channel from the Sabine River to the Houston Ship Channel with 12 – foot relocations in Matagorda and Corpus Christi Bays; and

WHEREAS, various elements of non-Federal cooperation are required by the above referenced statutes and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (Public Law No. 91-646): and,

WHEREAS, the state hereby represents that it has the authority by virtue of Articles 3266b and 5415e-2, Vernon's Texas Civil Statutes, and the capability to furnish said non-Federal cooperation for the Main Channel Project in accordance with Article 5415e-2 section 7, V.T.C.S. which states, "The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish this purposes of this Act."; and

WHEREAS, the State Highway and Public Transportation Commission, on the 20th day of June 1975 by Commission Minute No. 70103, authorized the State Engineer-Director for Highways and Public Transportation to execute these presents on its behalf and as its act and deed,

NOW THEREFORE, in consideration of the benefits accruing to its citizens by the construction, operation and maintenance of the Main Channel Project, the State, in accordance with the herein cited Federal legislation, assures the United States, to the extent permitted by Texas law, as follows:

1. With respect to the 1942 12-foot channel enlargement and extension, it shall defray the cost of constructing or remodeling all highway bridges, together with their subsequent maintenance and operation, and shall furnish, without cost to the United States, all rights-of-way and necessary spoil disposal areas as approved by the State. However, this resolution shall not have the effect of diminishing any rights or obligations the State would otherwise have under the terms of the Truman-Hobbs Act (33U.S.C.A. Sec 511 et seq.). The State hereby gives the United States a right to enter upon, at reasonable times and in a reasonable manner, lands which the State owns or controls, for access to said highway bridges for the purpose of inspection, and for the purpose of discharging the obligations of local cooperation assumed by the State if such inspection shows that the State for any reason is failing to comply with its obligations concerning the operation and maintenance of said bridges and has persisted in such failure after a reasonable notice in writing by the United States delivered to the State Engineer-Director for Highways and Public Transportation. No such action by the United States in such event shall operate to relieve the State of responsibility to meet its obligations as set forth herein or to preclude the United States from pursuing any other remedy at law or equity.
2. With respect to the 1946 Redfish Bay Relocation, it will furnish free of cost to the United States all lands, easements, and rights-of-way as approved by the State necessary for construction of the project and for subsequent maintenance as and when required: and hold and save the United States free from damages due to the construction works, except for damages due to the fault or negligence of the United States or its contractors.

3. With respect to the 1950 Galveston Bay Alternate Channel, it will furnish without cost to the United States all lands, easements, rights-of-way, and suitable spoil disposal areas as approved by the State for construction and maintenance of the alternate channel, when and as required; and hold and save the United States free from any damages resulting from construction and maintenance of the alternate channel, except for damages due to the fault or negligence of the United States or its contractors.
4. With respect to the 1962 16-foot channel and the 12-foot relocations in Matagorda and Corpus Christi Bays it will provide without cost to the United States all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and of aids to navigation upon the request of the Chief of Engineers, including suitable areas determined by the Chief of Engineers and approved by the State to be required in the general public interest for initial and subsequent disposal of spoil, accomplish and maintain without cost to the United States all alterations to pipelines, cables, and any other utilities necessary for the construction of the project; and hold and save the United States free from damages resulting from the construction work and maintenance of the channels, except for damages due to the fault or negligence of the United States or its contractors.
5. With respect to the Main Channel Project as required by the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970 (Public Law No. 91-646), hereinafter called the Act:
 - a. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under section 202, 203, 204, of the Act.
 - b. Relocation assistance programs offering the services described in section 205 of the Act shall be provided to such displaced persons.
 - c. Within a reasonable period of time prior to displacement, decent, safe and sanitary replacement dwellings will be available to displaced persons in accordance with section 205 (c) (3) of the Act.
 - d. In acquiring real property it will be guided, to the greatest extent practicable under State Law, by the land acquisition policies in section 301 and the provisions of section 302 of the Act.
 - e. Property owners will be paid or reimbursed for necessary expenses as specified by section 303 and 304 of the Act.

**LIST OF FEDERAL HOUSE DOCUMENTS
AUTHORIZING CONSTRUCTION OF TEXAS
GIWW**

The authorization and construction of the Gulf Intracoastal Waterway (GIWW) in Texas was accomplished through a series of congressional House Documents over a period of years between 1925 and 1949. Congress further authorized improvements to the main channel in years following.

**GIWW – MAIN CHANNEL
TEXAS SECTION AUTHORIZATIONS**

DATE OF AUTHORIZING ACT	PROJECT AND WORK AUTHORIZED	DOCUMENTS
Mar. 3, 1925	Channel 9 by 100 feet, Sabine River to Galveston Bay and a 20-inch pipeline dredge. Such passing places, widening at bends, locks or guard locks and railway bridges over artificial cuts as are necessary.	House Document 238, 68 th Congress, 1 st Session
Jan. 21, 1927	Channel 9 by 100 feet, Galveston Bay to Corpus Christi	House Document 238, 68 th Congress, 1 st Session
Mar. 23, 1939	Enlarge waterway to depth of 12 feet and a width of 125 feet from Sabine River to Corpus Christi.	House Document 230, 76 th Congress, 1 st Session
Jul. 23, 1942	Enlarge waterway from Corpus Christi to vicinity of Mexican border to provide a depth of 12 feet and width of 125 feet throughout.	Public Law 675, 77 th Congress
Jul. 24, 1946	Reroute main channel to north shore of Red Fish Bay between Aransas Bay and Corpus Christi Bay.	House Document 700, 79 th Congress, 2 nd Session
May 17, 1950	Alternate channel across South Galveston Bay between Port Bolivar and Galveston causeway.	House Document 196, 81 st Congress, 1 st Session
Oct. 23, 1962	Improve main channel 16 feet deep and 150 feet wide from Sabine River to Houston Ship Channel; with two relocations; relocate main channel in Matagorda Bay and Corpus Christi Bay and maintain existing Lydia Ann Channel.	House Document 556, 87 th Congress, 2 nd Session

RELATED FEDERAL LEGISLATION

Section 216 of the Federal Flood Control Act of 1970

Under the authority of Section 216 of the Federal Flood Control Act of 1970, the U.S. Army Corps of Engineers (Corps) can conduct a study of the Corps completed water resources projects which may have changed because of physical or economic reasons. The 216 Study process is divided into two phases. The first of these phases is the reconnaissance study, lasting an average of one year. The reconnaissance study identifies project changes, if any, and determines the interest of the federal government in proceeding with the next phase, or feasibility study. If the reconnaissance study identifies such interest, the process will then proceed to a three or four-year feasibility study, involving detailed engineering, economic, and environmental studies. Based on the results of those studies, the Corps then recommends the most cost-effective solution, which responds to the project needs, while protecting the environment. Important aspects of the feasibility study include the preparation of an environmental document in accordance with the National Environmental Policy Act (NEPA) and the development of a long-term disposal plan for the specific study reach. The product of the feasibility phase is a report which presents a recommendation to the United States Congress that the solution or project be implemented for the overall public interest. Congress must decide whether to authorize and fund the project.

Section 204 of the Water Resources Development Act of 1992

Under the Authority of Section 204 of the Water Resources Development Act of 1992, the Secretary of the Army, acting through the Corps, can conduct reviews of Corps' water resources projects to determine the need to restore, protect, and create aquatic and wetland habitats in connection with construction or maintenance dredging of an authorized federal project. Under Section 204, if the value of the lands, easements, right of way, relocations, and disposal areas plus the cash contribution does not equal or exceed 25 percent of the project cost, the sponsor must pay the additional amount necessary so that the sponsor's total contribution equals 25 percent of the project cost. Local expenditures more than the 25 percent contribution will be reimbursed.

Section 933 of the Water Resources Development Act of 1986

Under the authority of Section 933 of the Water Resources Development Act of 1986, the Secretary of the Army, acting through the Corps, can place beach-quality sand (which has been dredged during construction and maintenance of navigation inlets and channels) onto beaches under the following conditions: a) if such action is requested by the state; b) if the Secretary of the Army deems such action to be in the public interest; and c) upon payment of the cost exceeding normal disposal costs. Section 933 will also increase the additional costs that may be borne by the federal government to 50 percent above that required for the least-cost method of dredged

material disposal during the construction and maintenance of navigation inlets onto adjacent beaches. Accordingly, this authority provides for 50-50 cost sharing between the federal and non-federal participants for costs above the federal standard. In addition, the non-federal sponsor must provide any necessary additional lands, easements, rights-of-way, and relocation for the project. After completion of constructed project, the local sponsor must maintain and operate the project.

Section 206 of the Water Resources Development Act of 1996

Under the authority of Section 206 of the Water Resources Development Act of 1996, the Secretary of the Army, acting through the Corps, can conduct reviews of the Corps' water resources projects to determine the need to restore degraded aquatic ecosystems. The restoration project will be constructed only after the investigation shows that it will improve the environment along with being in the public's interest and cost-effective. The projects are limited each to a Federal cost of not more than \$5 million. Cost limitation includes all project-related costs for feasibility studies, planning, engineering, construction, supervision, and administration. Accordingly, this authority provides for 65-35 cost sharing between federal and nonfederal participants for costs above the federal standard. In addition, the non-federal sponsor must provide any necessary additional lands, rights of way, easements, and relocations for the project. After completion of constructed project, the local sponsor must maintain and operate the project.

Section 1135 of the Water Resources Development Act of 1986

Under the authority of Section 1135 of the Water Resources Development Act of 1986, the Secretary of the Army, acting through the Corps, can conduct reviews of the Corps' water resources projects to determine the need for modifications to improve the environment's quality in the public interest. The reviews must address those needs within a program as a result of a Corps' project and must provide restoration or enhancement of the environmental quality. Projects under this authority must have a non-federal cost-sharing sponsor to provide at least 25 percent of the total cost of project planning, engineering and design, and construction. In addition, project application does not automatically guarantee funding; it must go through the Corps' approval process.

RELATED STATE LEGISLATION
VERNON'S TEXAS CIVIL STATUTES
TITLE 86—LANDS—PUBLIC
CHAPTER SEVEN—GENERAL PROVISIONS
ART. 5415e—4. DREDGE MATERIALS ACT

Short Title

Sec. 1. This Act may be cited as the Dredge Materials Act.

Policy

Sec. 2. (a) It is the declared policy of the state to seek, to the fullest extent permissible under all applicable federal law or laws, the delegation to the state of the authority which the corps of engineers exercises under Section 404, as defined in this Act, over the discharge of dredged or fill material in the navigable waters of the State of Texas.

(b) It is the declared policy of the state that the state should not duplicate the exercise of such authority by the corps of engineers, but should instead exercise such authority in lieu of the corps of engineers, so that no permit application is subject to duplicate levels of regulation.

Definitions

Sec. 3. As used in this Act, unless the context clearly requires otherwise:

(a) "Agency" means the Texas Water Quality Board.

(b) "Agreement" means a written agreement or contract between the State of Texas and the United States, authorizing the State of Texas, through (name of an existing agency), to regulate the discharge of dredged or fill material in the navigable waters of the state under the authority granted by Section 404, as defined in this Act.

(c) "Corps of engineers" means the United States Army Corps of Engineers.

(d) "Discharge of dredged or fill material" has the same meaning as it has in Section 404 as defined in this Act.

(e) "Navigable waters" has the same meaning within the boundaries of the State of Texas as it has in Section 404 as defined in this Act.

(f) "Section 404" means Section 404, Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), as it may be amended, and such regulations as may be from time to time promulgated thereunder.

Limitations

Sec. 4. (a) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from or inconsistent with the requirements of Section 404.

(b) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state:

(1) by the corps of engineers;

(2) by persons operating under contract with the corps of engineers;

(3) when the corps of engineers certifies that such discharge is incidental to a project undertaken by the corps of engineers or persons operating under contract with the corps of engineers, and that such incidental discharge was announced and reviewed at the same time and under the same conditions as such project; or

(4) by cities which own and operate deepwater port facilities, or by navigation districts or port authorities, or by persons operating under contract with such cities, navigation districts, or port authorities, when such discharges are part of or incidental to a navigation project to be paid for with public funds or when such navigation project is to be owned by such cities, navigation districts, or ports.

(c) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner unless and until an agreement as described in this Act is validly entered into and in effect.

(d) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to exercise any authority under this Act except in accordance with an executive order of the governor.

(e) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from, or inconsistent with, the agreement described in this Act.

(f) Nothing in this Act shall be construed as affecting any application for a permit from the corps of engineers to discharge dredged or fill material in the navigable waters of the state if such application is received by the corps of engineers or postmarked before the effective date of the agreement described in this Act.

Agreement

Sec. 5. (a) The governor is hereby authorized to enter into an agreement on behalf of the State of Texas, with the United States, acting through its authorized officials, under the terms of which the agency will regulate the discharge of dredged or fill material in the navigable waters of the state.

(b) The governor is expressly authorized to include whatever terms and conditions in such agreement he may deem to be in the best interest of the state, including provisions regarding the termination of such agreement.

(c) The authority of the governor under the Act to enter into such an agreement shall not be delegated.

(d) The legislature expressly finds that the provisions of this section are necessary to enable the governor to carry out his responsibilities under this Act.

Not Severable

Sec. 6. The provisions of this Act are expressly declared not to be severable, and if any provision of this Act shall be found to be invalid, the entire Act shall be null and void and of no further force or effect.

Acts 1977, 65th Leg., p. 1906, ch. 759, eff. Aug. 29, 1977.

PARKS AND WILDLIFE CODE

CHAPTER 14. POWERS AND DUTIES CONCERNING WETLANDS

SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 14.001. Definitions

In this chapter:

- (1) "Department" means the Parks and Wildlife Department.
- (2) "Land office" means the General Land Office.
- (3) "Mitigation" means the sequential process of avoiding impacts to wetlands, minimizing impacts to wetlands, and providing compensation for losses to wetlands.
- (4) "State-owned coastal wetlands" mean wetlands owned by state agencies underlying or adjacent to tidal waters.

Added by Acts 1991, 72nd Leg., ch. 265, § 3, eff. June 5, 1991.

§ 14.002. State-Owned Wetland Conservation Plan

(a) The department and the land office, in conjunction, shall develop and adopt a State Wetlands Conservation Plan for state-owned coastal wetlands. The Texas Natural Resource Conservation Commission and other state agencies and local governments shall assist in developing and implementing the plan. The department and the land office shall consult with federal agencies in developing and adopting the plan.

(b) The plan shall include:

- (1) a definition of the term "wetlands" consistent to the greatest extent practicable with the definition under Subchapter J, Chapter 11, Water Code, and federal law;
- (2) a policy framework for achieving a goal of no overall net loss of state-owned coastal wetlands, which framework shall include monitoring and enforcement of the no overall net loss policy;
- (3) provisions for an inventory of state-owned coastal wetlands to determine gains and losses in aerial extent, wetland types, wetland function, and the causes of wetlands alterations;
- (4) provisions for an inventory of sites for compensatory mitigation, enhancement, restoration, and acquisition priorities;
- (5) clarification and unification of wetland mitigation policies within the department, the land office, and the Texas Natural Resource Conservation Commission, and other state agencies and subdivisions;
- (6) development of guidelines and regulations for mitigation done in advance for losses due to possible future development and for which credit may be received when such future development occurs;
- (7) evaluation of requirements of freshwater inflow to estuaries that affect state-owned coastal wetlands;

(8) preparations for a long-range navigational dredging and disposal plan, in consultation with the Texas Department of Transportation, port authorities, and navigation districts, including the recommendations set out in the department's Texas Outdoor Recreation Plan;

(9) provisions for scientific studies examining the effects of boat traffic in sensitive coastal wetland areas and for education of the public with regard to the effects of boating in wetlands and proper nondamaging boating techniques;

(10) provisions to encourage the reduction of nonpoint source pollution of coastal wetlands, bays, and estuaries, in consultation with the Texas Natural Resource Conservation Commission, including the monitoring and adoption of nonpoint source pollution standards as they are developed by authorized state and federal agencies;

(11) development of a networking strategy to improve coordination among existing federal and state agencies with respect to coastal wetland permitting, review, and protection responsibilities, including the assessment of current state agency permitting and other processes concerning coastal wetlands;

(12) a public education program on wetlands with the responsibility for the production of such material to be jointly that of the land office and the department;

(13) participation in the establishment of a National Wetlands Information Center by the federal government;

(14) evaluation of the feasibility and effect of sediment bypassing from reservoirs to bays and estuaries;

(15) consideration of sea level rise as it relates to coastal wetlands;

(16) provisions consistent with the department's Texas Wetlands Plan;

(17) a plan to acquire coastal wetlands, following the guidelines provided for in Subchapter G, Chapter 33, Natural Resources Code; and

(18) any other matter affecting state-owned coastal wetlands.

(c) The department and the land office shall submit the plan to the Parks and Wildlife Commission and the School Land Board for review, comments, and approval.

(d) Following approval of the plan, the Parks and Wildlife Commission and the School Land Board shall adopt rules, policies, standards, and guidelines to implement the plan fully.

Added by Acts 1991, 72nd Leg., ch. 265, § 3, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.279, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, § 22(64), eff. Sept. 1, 1995.

§ 14.003. Gifts and Grants

The department and the land office may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out the powers and duties provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 265, § 3, eff. June 5, 1991.

NATURAL RESOURCES CODE

CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

SUBCHAPTER G. COASTAL WETLAND ACQUISITION

§ 33.231. Short Title

This subchapter may be cited as the Coastal Wetland Acquisition Act.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.

§ 33.232. Policy

It is the declared policy of the state:

(1) to protect the property rights of those who sell interests in land to the state by fairly compensating the sellers;

(2) to protect that coastal wetland which is most essential to the public interest by acquiring fee and lesser interests in the coastal wetland and managing it in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland; and

(3) to assure that the state does not expend funds to acquire any coastal wetland to which it already holds a valid title at the time of the expenditure.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.

§ 33.233. Definitions

In this subchapter:

(1) "Acquiring agency" means the Parks and Wildlife Department.

(2) "Land office " means the General Land Office.

(3) "Coastal wetland" means wetlands underlying or adjacent to tidal waters in the coastal area.

(4) "Wetlands" has the meaning assigned under Subchapter J, Chapter 11, Water Code.

(5) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, § 4, eff. June 5, 1991.

§ 33.234. Duties and Authority of Acquiring Agency

(a) The acquiring agency shall do the following:

- (1) accept gifts, grants, or devises of interests in land;
 - (2) acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetland certified as most essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such land as coastal wetland; and
 - (3) manage interests in land acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland.
- (b) This subchapter shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.
- (c) The acquiring agency shall promulgate reasonable rules and regulations necessary to preserve and protect the productivity and integrity of the land as coastal wetland acquired pursuant to this subchapter. The rules and regulations shall include regulations governing activities conducted on the land in conjunction with mineral exploration, development, and production.
- (d) If the acquiring agency seeks to condemn an interest less than the fee interest in the surface estate in any coastal wetland, the owner of the coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in the coastal wetland. Upon this demand, the acquiring agency shall either:
- (1) seek to condemn the fee interest in the surface estate in the coastal wetland; or
 - (2) cease all condemnation proceedings pursuant to this subchapter against the coastal wetland.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, § 5, eff. June 5, 1991.

§ 33.235. Agricultural Exemption

Coastal wetland used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this subchapter. However, this exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct on the wetland, activities other than farming and ranching activities, including irrigation and water well drilling, and activities necessary to exploration, development, or production of the underlying mineral estate.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.

§ 33.236. Duties and Authority to Certify

(a) The land office and the acquiring agency, in coordination, shall do the following:

(1) certify coastal wetlands which are most essential to the public interest in accordance with criteria developed by the land office and the acquiring agency under Chapter 14, Parks and Wildlife Code, and this subchapter, assign priorities for acquisition of interests in the coastal wetland, and revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) publicize the importance to the public interest of coastal wetland in general, and of designated coastal wetland in particular.

(b) A certification, assignment of priority for acquisition, or revocation of certification made pursuant to this subchapter does not constitute a "contested case" within the meaning of Chapter 2001, Government Code.

(c) to (h) Repealed by Acts 1991, 72nd Leg., ch. 265, § 7, eff. June 5, 1991.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, §§ 6, 7, eff. June 5, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(49), eff. Sept. 1, 1995.

§ 33.237. Most Essential Coastal Wetland Certification

(a) In selecting and certifying coastal wetland most essential to the public interest, and in assigning priorities of acquisition to coastal wetland, the land office and the acquiring agency shall consider the following criteria:

(1) whether the land is coastal wetland within the definition, intent, and purpose of this subchapter;

(2) whether the state owns the coastal wetland or claims title to it, which title can be validated by bringing an appropriate action in a court of law;

(3) whether the biological, geological, or physical characteristics of the coastal wetland, including the interrelationship of the coastal wetland with other coastal wetland, is essential to the public interest;

(4) the degree to which the coastal wetland is in danger of being altered, damaged, or destroyed, and the imminence of that danger; and

(5) the cost of acquiring the coastal wetland.

(b) The legislature declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 33.235 of this code are made only for the purpose of administering the provisions of this subchapter. No certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this subchapter.

(c) A certification made pursuant to this subchapter shall expire one year from the date of certification.

(d) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, the certification shall extend until the suit is settled, dismissed, or otherwise terminated.

(e) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of the certification, the certification shall extend until title to the coastal wetland is conveyed to the state or the contract is rescinded, invalidated, or otherwise terminated.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, § 8, eff. June 5, 1991.

§ 33.238. Funding

The acquiring agency may compensate the seller of land acquired pursuant to this subchapter with funds obtained through:

- (1) gift, grant, or devise;
- (2) legislative appropriation; or
- (3) gift or grant from the United States.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.